

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4498 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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STATE OF GUJARAT

Versus

SOMABHAI BATHIBHAI RATHOD

Appearance:

Mr K G Sheth, AGP for Petitioner
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 21/07/2000

ORAL JUDGEMENT

This petition has been filed by the State of Gujarat challenging the judgment and order of the Labour Court at Nadiad. The respondent above named obtained an order from the Labour Court, Nadiad in Reference No.275

of 1984 for reinstatement with backwages. The order was passed on 26.4.1989. The petitioner-State was served but none appeared and, therefore, ex-parte orders were passed after filing written statement. Being aggrieved by the said order passed by the learned Presiding Officer, Labour Court, Nadiad in Reference No.275/84, the petitioner preferred Misc.Application No.48/89 for setting aside the ex-parte order. The said application was dismissed by the Labour Court on 26.10.1990 after hearing. Against the said judgment and order of the Labour Court, the petitioner-State has preferred this petition under Article 226 and 227 of the Constitution of India. It has been mainly contended that some officers were transferred time and again and, therefore, the matter could not be effectively dealt with before the Labour Court and, therefore, the present petition be allowed and appropriate writ, order or direction be issued to quash and set aside the orders dated 26.4.1989 and 26.10.1990 passed by the Presiding Officer of the Labour Court.

2. Notice was issued at the first instance and thereafter Rule was issued. However, none appeared though the notice of rule was served upon the respondent.

3. I have heard Mr K G Sheth, learned AGP for the State of Gujarat and have perused the papers. It appears that there is some sort of misunderstanding or gap of communication on the part of the State machinery. On account of frequent transfers, the matter was lost sight of and the officer who was supposed to defend the case, did not attend the court. Therefore, the State is required to suffer. After all the matter has been decided ex-parte and it would not be wrong to get it decided afresh by-partes under the hope that the concerned officers will positively appear before the Court concerned and defend the case of the State. In view of the aforesaid position, I am of the view that when there is some gap of communication on account of transfers of officers and when the matter was lost sight of, it would be just and proper to leave the parties to get the decision on merit of the case.

4. In view of the aforesaid, the present petition is allowed. The impugned orders passed by the Labour Court on 26.4.1989 as well as on 26.10.1990 are ordered to be quashed and set aside. The Labour Court shall proceed with the matter and decide the matter on merit in accordance with law after due notice to the parties and after giving reasonable opportunity of being heard.

Rule is made absolute accordingly. No order as to costs.

msp [D P Buch, J.]